

A Summary of Fusion Centers: Core Issues and Options for Congress

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Summary

This report summarizes the main points of CRS Report RL34070, *Fusion Centers: Issues and Options for Congress*, by John Rollins. It highlights the value proposition of such centers, as well as the obstacles and risks they face. All of the information provided herein is provided in greater detail in the original report, which will be updated as necessary.

Although elements of the information and intelligence fusion function were conducted prior to 9/11, often at state police criminal intelligence bureaus, the events of 9/11 provided the primary catalyst for the formal establishment of more than 40 state, local, and regional fusion centers across the country. The value proposition for fusion centers is that by integrating various streams of information and intelligence, including that flowing from the federal government, state, local, and tribal governments, as well as the private sector, a more accurate picture of risks to people, economic infrastructure, and communities can be developed and translated into protective action. The ultimate goal of fusion is to prevent man-made (terrorist) attacks and to respond to natural disasters and man-made threats quickly and efficiently should they occur. Fusion centers are state-created entities largely financed and staffed by the states, and there is no one “model” for how a center should be structured. State and local law enforcement and criminal intelligence seem to be at the core of many of the centers. While many of the centers have prevention of attacks as a high priority, little “true fusion”—analysis of disparate data sources, identification of intelligence gaps, and pro-active collection of intelligence against those gaps which could contribute to prevention—is occurring.

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Introduction

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Background

The creation of post-9/11 intelligence/information¹ fusion centers² does not represent a totally new concept, but suggests an extension of pre-9/11 state and local law enforcement intelligence activities. Most state police/bureau of investigation agencies have run intelligence or analytic units for decades. Many of the fusion centers examined for this report were the outgrowth of those units, prompting some to refer to fusion centers as “state police intelligence units on steroids.” Conceptually, fusion centers differ from their predecessors in that they are intended to broaden sources of data for analysis and integration beyond criminal intelligence, to include federal intelligence as well as public and private sector data. Furthermore, fusion centers broaden the scope of state and local analysis to include homeland security and counterterrorism issues.

Despite being an expansion of existing sub-federal intelligence/information activities, fusion centers represent a fundamental change in the philosophy toward homeland defense and law enforcement. The rise of fusion centers is representative of a recognition that non-traditional actors—state and local law enforcement and public safety agencies—have an important role to play in homeland defense and security. In addition, there has been a shift towards a more proactive approach to law enforcement in the United States.

Numerous national strategies have assessed the primary threat to U.S. national security as terrorism, both at home and abroad.³ Indeed, the National Strategy on Homeland Security

¹ Intelligence is information to which value has been added through analysis and is collected in response to the needs of policymakers. At the most generic level, there are two types of intelligence: raw and finished. Raw intelligence is that which has not been vetted, verified and validated. Finished intelligence, which includes information of unknown credibility, has been through an analytical process which has resulted in conclusions and judgments being made. As opposed to evidence, which is generally gathered in support of a prosecution, intelligence is gathered to inform policymakers and those individuals responsible for taking actions, including national security, law enforcement and public safety officials. While intelligence may occasionally be introduced into legal proceedings, generally it is not.

² The Fusion Center Guidelines define a fusion center as “a collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal and terrorist activity.” Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era, August 2006, available at http://it.ojp.gov/documents/fusion_center_guidelines_law_enforcement.pdf. Some apply this definition broadly to include any multi-jurisdictional anti-crime or response effort that may utilize intelligence and/or information, to include federally-owned and operated collaborative efforts, like Federal Bureau of Investigation -led Joint Terrorism Task Forces (JTTFs) or High Intensity Drug Trafficking Area (HIDTA). The authors, however, limit their discussion of fusion centers to those 40+ largely state and regional entities created to enhance the ability of the jurisdiction to prevent, mitigate, and in some cases, respond and recover, from man-made threats, attacks, and natural disasters.

³ For example, the National Strategy on Counterterrorism states that “The paradigm for combating terrorism now involves the application of all elements of our national power and influence. Not only do we employ military power, we use diplomatic, financial, intelligence, and law enforcement activities to protect the Homeland and extend our defenses, disrupt terrorist operations, and deprive our enemies of what they need to operate and survive.” See *The National Strategy for Combating Terrorism*, September 2006, p. 1. According to the Director of National Intelligence (DNI), “Terrorist threats to the Homeland, to our national security interests, and to our allies remain the pre-eminent challenge to the Intelligence Community...” See “Annual Threat Assessment of the Director of National Intelligence,”

provides that “the American People and way of life are the primary targets of our [terrorist] enemy and our highest protection priority.”⁴ The means for combating this threat are broad and encompass all elements of national power, to include non-traditional sectors. From a law enforcement perspective, it has been argued that state and regional intelligence fusion centers, particularly when networked together nationally, represent a proactive tool to be used to fight a global jihadist adversary which has both centralized and decentralized elements. This network of fusion centers is envisioned as a central node in sharing terrorism, homeland security, and law enforcement information with state, local, regional, and tribal law enforcement and security officials.⁵

Fusion Center Value Proposition

Conceptually, the argument that fusion centers represent a vital part of our nation’s homeland security relies on at least four presumptions:

- Intelligence, and the intelligence process, plays a vital role in preventing terrorist attacks.
- It is essential to fuse a broader range of data, including non-traditional source data, to create a more comprehensive threat picture.
- State, local, and tribal law enforcement and public sector agencies are in a unique position to make observations and collect information that may be central to the type of threat assessment referenced above.
- Having fusion activities take place at the sub-federal level can benefit state and local communities, and possibly have national benefits as well.

Even if one accepts these four presumptions, important questions arise regarding the current and/or potential efficacy of fusion centers. Given the fractured development of grassroots fusion centers around the country, and the broad nature of federal guidelines on the subject, there appears to be no “one-size-fits-all” structural or operational model for fusion centers. In order to determine the development and utility of fusion centers, the following common themes, and more importantly, common questions, should be examined:

- Do fusion centers solve the pre-9/11 information sharing problems, and as such, make Americans safer?
- Can fusion centers work if they aren’t part of an integrated philosophy of intelligence and security?
- Who benefits from fusion centers? Who should staff, fund, and oversee them? What role, if any, should fusion centers play in the Intelligence Community (IC)? What role should federal agencies play in fusion centers, to include funding? Do fusion centers represent a shift in the security v. civil liberties pendulum? How

Testimony of Ambassador John D. Negroponte, Before the Senate Select Committee on Intelligence, January 11, 2007, p. 2.

⁴ See *The National Strategy on Homeland Security*, July 2002, p. 7.

⁵ This vision is promoted by the Program Manager - Information Sharing Environment (PM - ISE), which was created by Intelligence Reform and Terrorism Prevention Act of 2004, Section 1016 and was placed under the administration of the Office of the Director of National Intelligence. The functions, but not necessarily the authorities, of the ISE transcend the boundaries of the federal intelligence and law enforcement communities. See Chapter Seven “Sharing with Partners Outside the Federal Government,” in *Information Sharing Environment Implementation Plan*, Office of the Director of National Intelligence, November 2006.

active and pro-active, if at all, should fusion centers be in the collection of intelligence that is not directly tied to a specific and identifiable criminal act?

- Is some basic level of common standards necessary in order for fusion centers to offer a national benefit? Moreover, does the federal government have an integrated national fusion center strategy? What concrete results does the federal government expect from fusion centers? How is the federal government assessing fusion center performance and do federal funds align with these expectations and possible mission shortcomings?
- Is the current configuration of 40 plus fusion centers, with, in some cases, several operating within one state, the most efficient organizational structure?
- Is the current approach to creating, authorizing, funding, and supporting fusion centers sustainable? What are the risks to the fusion center concept and how have those risks been specifically weighed and balanced against the stated goals of fusion center operations?

Potential Risks for Fusion Centers

There are several potential risks associated with fusion center development. One risk focuses on the hazards associated with creating fusion centers without the requisite philosophical and organizational changes necessary within the intelligence and law enforcement communities to sustain the work of the centers. The other risks focus on factors that could ultimately diminish political and popular support for fusion centers, and ultimately result in their demise or marginalized contribution to the national homeland security mission.

Potential Risk: Underlying Philosophy

Some might argue that the rise of state and regional fusion centers may have been premature—that is, the establishment of these entities in the absence of a common understanding of the underlying discipline. Creating a fusion center is a tangible action that seeks to enhance state and/or regional coordination and cooperation to prevent and mitigate, and in some cases, respond and recover from, homeland security threats. However, others ask, if fusion center development occurs devoid of a more fundamental transformation, is any real progress made? Another philosophical concern stems from the different conceptions of intelligence among the intelligence and law enforcement communities. In the absence of a common understanding about what constitutes intelligence, fusion center development and progress may be impeded. Ultimately, without a common framework among disparate fusion centers and other homeland security agencies, it is possible that benefits of their efforts will remain narrow, rather than having a national impact. While fusion center guidelines represent a movement to provide fusion centers with a common framework, and were generally well-received by the centers, arguably, the 2006 Fusion Center Guidelines have the following limitations: (1) they are voluntary, (2) the philosophy outlined in them is generic and does not translate theory into practice, and (3) they are oriented toward the mechanics of fusion center establishment.

Potential Risk: Civil Liberties Concerns or Violations

The essence of fusion, as outlined above, is the integration and analysis of existing streams of information and intelligence for actionable public policy ends—be they counterterrorism, broader counter-crime issues, or natural disaster response. Embedded in the fusion process is the assumption that the end product of the fusion process can lead to a more targeted collection of

new intelligence, to include private sector data, which can help to prevent crime. It could be argued that through a more pro-active and targeted intelligence process, one that has as its starting point an intelligence gap, or unknown about a particular threat, it is possible that sophisticated criminal groups could be undermined. However, the potential fusion center use of private sector data, the adoption of a more proactive approach, and the collection of intelligence by fusion center staff and partners has led to questions about possible civil liberties abuses.

Arguments against fusion centers often center around the idea that such centers are essentially pre-emptive law enforcement—that intelligence gathered in the absence of a criminal predicate is unlawfully gathered intelligence. Some might argue that the further law enforcement, public safety and private sector representatives get away from a criminal predicate, the greater the chances that civil liberties may be violated. Furthermore, it could be argued that one of the risks to the fusion center concept is that individuals who do not necessarily have the appropriate law enforcement or broader intelligence training will engage in intelligence collection that is not supported by law.⁶ The concern is to what extent, if at all, First Amendment protected activities may be jeopardized by fusion center activities. According to the American Civil Liberties Union (ACLU), “We’re setting up essentially a domestic intelligence agency, and we’re doing it without having a full debate about the risks to privacy and civil liberties.”⁷ Furthermore, the ACLU is also concerned with having the Department of Homeland Security (DHS) perform a coordinating role at the federal level with respect to these centers. “We are granting extraordinary powers to one agency, without adequate transparency or safeguards, that hasn’t shown Congress that it’s ready for the job.”⁸

Most of the fusion center representatives interviewed for this report appeared to be aware of the need to be respectful of privacy and civil liberties as a result of 28 CFR Part 23, the Fusion Center Guidelines,⁹ the *National Criminal Intelligence Sharing Plan* (NCISP),¹⁰ DHS/Department of Justice (DOJ)-sponsored fusion center conferences, and DHS—provided Technical Assistance Training, as well as interactions with peer fusion centers. Several fusion centers had, or were in the process of creating, a governance board, to serve an oversight function, especially on civil liberty concerns. In one case, a fusion center cited concern for civil liberties as the reason it had specifically chosen a former judge to sit on its governing board. Many centers also claim to have privacy policies, a couple of which were reviewed by local ACLU or other civil liberties organization representatives.¹¹ However, few of the centers had aggressive outreach programs to explain to the public the type of intelligence activities their centers could and could not engage in.

This report is not meant to provide an authoritative legal interpretation of related law. Due to disparate state laws authorizing fusion center or criminal intelligence activities, for purposes of criminal intelligence systems, most fusion centers operate under federal regulations, in addition to

⁶ Some might argue that the entire concept for fusion centers, particularly those aspects involving the incorporation of private sector data that may not be accurate or based on any criminal predicate is fundamentally flawed. If there is little legal recourse for citizens to challenge information related to them that resides in commercially available databases, and such information is included in fusion center operations, privacy rights and civil liberties could be undermined.

⁷ See Shane Harris, “Issues and Ideas—Fusion Centers Raise a Fuss,” in *National Journal*, February 10, 2007.

⁸ *Ibid.*

⁹ One of the prominent Fusion Center Guidelines recommends fusion centers “Develop, publish, and adhere to a privacy and civil rights policy.” See U.S. Department of Homeland Security & U.S. Department of Justice, *Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era*, available at http://it.ojp.gov/documents/fusion_center_guidelines_law_enforcement.pdf, p. 49.

¹⁰ Available at http://www.it.ojp.gov/topic.jsp?topic_id=93.

¹¹ Interview with state fusion center representative, April 23, 2007.

any applicable state policies, laws or regulations.¹² At the federal level, the authorities which guide the FBI in collection of intelligence are the *Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection*.¹³ At the state and local levels, if there is any analogue to the Attorney General's guidelines for multi-jurisdictional criminal intelligence systems, it is 28 Code of Federal Regulations (CFR) –(Judicial Administration), Chapter 1 (Department of Justice), Part 23 (criminal intelligence systems operating policies). Many centers cite 28 CFR, Part 23 as the guiding legal mechanism for their criminal intelligence operations. By its terms, 28 CFR, Part 23, applies to “all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.” From the perspective of intelligence collection, the 28 CFR, Part 23 standard is reasonable suspicion. One of the operating principles of 28 CFR, Part 23 is that “A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.”¹⁴ Further:

Reasonable Suspicion or Criminal Predicate is established when information exists which established sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individuals or organization is involved in a definable criminal activity or enterprise.¹⁵

The question of how to balance civil liberties with security remains an open issue Congress and the country often weighs. The balancing is, arguably, a moving target driven by the country's collective sense of security and safety.

Potential Risk: Time

Some homeland security observers suggest that the rush to establish and enhance state fusion centers is a post-9/11 reaction and that over time some of the centers may dissolve. It could be argued that in the absence of another terrorist attack or catastrophic natural disaster, over the course of the next 5 to 10 years, state and regional fusion centers may be eliminated and/or replaced by regional fusion organizations. The state fusion regional representation organizations may be an entity to facilitate future center consolidation efforts. Issues that may lead to state and regional fusion center consolidation into regional organizations include

- perceived lack of need by state leaders,
- state and federal financial constraints,
- duplication of effort without showing tangible products and services within a given center, and

¹² See e.g. Burns Ind. Code Ann. §§5-2-4-1, 10-19-10-1 through 10-1-10-4; Va. Code Ann §§ 52-47, 44-146.22 note.

¹³ The Guidelines stipulate three levels of investigation into threats – threat assessments, preliminary investigation, and full field investigation; each level has certain legal thresholds and investigative tools attached to it. Depending on available information, these investigative tools and techniques range from non-intrusive (open source collection) to intrusive (electronic surveillance). The least intrusive of all levels of investigation is the threat assessment, which allows the FBI to pro-actively “... use available information to identify terrorist threats and activities ... when the FBI receives information or an allegation about possible terrorist activity, and the matter can be checked out promptly through relatively non-intrusive techniques.” See U.S. Department of Justice, *Fact Sheet, Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection*, November 3, 2003, pp. 2-3.

¹⁴ See 28 CFR, Part 23, Section 23.20 (a) and (c) (Operating Principles).

¹⁵ Ibid.

- reduction of risks to a given geographic location.

Alternatively, if there are additional terrorist attacks or natural disasters in the near future and fusion centers can demonstrate their tangible value by serving as proactive, analytic and/or operational information/intelligence hubs, it is plausible that substantial additional federal, state, and local funds may flow to these centers.

Potential Risk: Funding

Related to the potential time risk is a possible funding risk. That is, if the United States is not the target of a successful terrorist attack, homeland security funding, arguably, may decrease. If overall federal funding levels for homeland security decrease, it is possible that there will be some level of decrease in Homeland Security Grant Program (HSGP)¹⁶ funding. Such a decrease might force states to re-prioritize funds for those programs deemed the most critical to their jurisdiction. Specific federal programs that fund and/or support fusion centers (i.e., DHS and FBI detailee programs) could potentially also suffer under funding cuts. It is unclear how fusion centers would fare in such a situation. It is likely that the fate of fusion centers would differ drastically from state to state, depending on a range of factors, to include, their level of maturity, buy-in from other agency partners, their resource needs, and noted successes, balanced with other critical issues and programs within the jurisdiction.

Fusion Center Landscape

Creation, Ownership, and Unresolved Issues

Today, there are over 40 intelligence/information fusion centers across the country (see **Appendix**). Fusion Centers are overwhelmingly a post-9/11 phenomena. The majority of centers are state-owned or operated, although there are several (less than 20% of all fusion centers) in large urban centers, usually Urban Area Security Initiative (UASI)¹⁷ areas. Most of the state-wide fusion centers are the outgrowth of the state's police or investigative agency's existing intelligence resources. Several states have more than one fusion center. The number of fusion centers, as variously defined, within a single state ranges from two to eight. In some states, these fusion centers appear to work well together, or at least have taken steps to enhance their working relationship. In other cases there appears to be friction and potentially even duplication of mission and competition between the centers.

¹⁶ Homeland Security Grant Program is comprised of five interconnected grant programs: 1) State Homeland Security Program, 2) Urban Area Security Initiative (UASI), 3) the Law Enforcement Terrorism Prevention Program (LETPP), 4) the Metropolitan Medical Response System (MMRS), and 5) the Citizens Corps Program (CCP). See DHS, Office of Grants and Training, *FY 2007 Homeland Security Grant Program—Program Guidance and Application Kit*, January 2007, p. 1.

¹⁷ The Urban Area Security Initiative (UASI) Grant Program is intended to provide "... grants to assist high-risk urban areas in preventing, preparing for, protecting against, and responding to acts of terrorism." Areas are deemed high-risk according to numerous factors, including "its relatively threat, vulnerability, and consequences from acts of terrorism, including consideration of..." population, population density, history of threats, degree of threat, vulnerability and consequence related to critical infrastructure, current threat assessments, location near an international border, as well as other factors. See "Implementing Recommendations of the 9/11 Commission Act of 2007," P.L. 110-53, sections 2003 and 2007. For more information on DHS risk assessment methods, see CRS Report RL33858, *The Department of Homeland Security's Risk Assessment Methodology: Evolution, Issues, and Options for Congress*, by Todd Masse, John Rollins, and Siobhan O'Neil.

Fusion Center Legal Authority

The majority of fusion centers do not operate under distinct or recognized legal authority. Currently, the legal authorities supporting fusion centers range from nonexistent, to memorandums of agreement by the partnering agencies, and in one case a state statute which defines the center and its responsibilities. In most cases this is due to the fact that fusion centers are the outgrowth of an existing organization, and as such, the centers often operate as an extension of the parent entity and operate under its existing legal authority.

Fusion Center Roles and Responsibilities

Many of the “first-wave” centers, those created soon after 9/11, were initially solely focused on counterterrorism. Today, less than 15% of the fusion centers interviewed for this report¹⁸ described their mission as solely counterterrorism. Since their inception, many counterterrorism-focused fusion centers have expanded their mission to include all-crimes and/or all-hazards. Sometimes this shift is official, for others it is *de facto* and reflected in the day-to-day operations of the center, but not in official documentation. This shift toward an all-crimes and/or all-hazards focus can be explained by several factors, to include desire to conform to what they see as a national trend, the need for local and non-law enforcement buy-in, and the need for sustainable resources.

Approximately 40% of fusion centers interviewed for this report describe their center’s mission as “all-crimes.” However, some fusion centers are concerned with any crime, large or small, petty or violent, while others are focused on large-scale, organized, and destabilizing crimes, to include the illicit drug trade, gangs, terrorism, and organized crime, which one center deemed a “homeland security focus.”

A little more than 40% of fusion centers interviewed for this report describe their center as “all-hazards” as well as all-crimes. It appears as if “all-hazards” means different things to different people—for some, all-hazards suggests the fusion center is receiving and reviewing streams of incoming information/intelligence from agencies dealing with all-hazards, to include law enforcement, fire departments, and emergency management. To others, all hazards means that representatives from the aforementioned array of public sectors are represented in the center and/or considered partners to its mission. At some centers, all-hazards denotes the entity’s mission and scope—meaning the fusion center is responsible for preventing and helping to mitigate both man-made events and natural disasters. For others, “all-hazards” indicates both a pre-event prevention role as well as a post-event response, and possibly recovery, role.

The majority of fusion centers interviewed for this report claim to serve a solely, or at least primarily, analytic role. They provide analytic support functions for operations and investigations, but are not necessarily engaged in such activities. Those centers that are more operational in nature tended to be either largely “owned” and operated by a single state police/bureau of investigations agency, and/or predominately staffed by sworn law enforcement personnel (as compared to more analyst-heavy fusion centers). The operational activities these centers engaged

¹⁸ CRS conducted in-depth interviews based on a standard protocol with 36 state fusion centers. CRS also consulted with federal stakeholders at DHS, the FBI, the Government Accountability Office (GAO) and the Program Manager-Information Sharing Environment. CRS attended the first annual national fusion center conference and hosted a fusion center seminar at the Library of Congress which was attended by representatives from Maryland, Virginia, and Washington, DC, fusion centers. Stakeholders from academia, the American Civil Liberties Union (ACLU), and state and local law enforcement were also consulted.

in included responding to incident scenes, running/assisting with investigations, and tasking collectors.

The overwhelming majority of fusion center officials interviewed for this report saw their centers as primarily prevention-oriented entities. In order to prevent, as well as mitigate, a variety of threats, fusion centers work to enhance information sharing, conduct threat assessments and analysis, and support and/or facilitate preparedness efforts. In most states, there is an emergency management agency and/or operation center that is responsible for response and recovery activities to both man-made and natural disasters.¹⁹ However, in numerous cases, the fusion center is described as playing a situational awareness role to support the emergency operations center (EOC) during events. In a few cases, fusion centers had a more active role: at least two have sent analysts to the command posts at both high profile events and relevant emergencies to relay information back to the fusion center.

Staffing

In general, the fusion centers studied for this report remain largely law enforcement oriented entities, staffed by state law enforcement personnel.²⁰ Staffing levels at fusion centers range from 3 to nearly 250 full-time personnel, with the average number of full time staff at approximately 27 persons.

Federal representation at the fusion centers, the roles the agencies play, and size of detailee staff differed significantly from center to center. Approximately 30% of fusion centers are collocated with a federal agency(s) and, as a result, that federal agency(s) may have a significant influence on their development, operation, and even budget demands. Furthermore, there appears to be a direct correlation between federal participation and the center's positive view of its relationship with that agency. Federal agencies that participate in various centers, to various degrees, include Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), National Guard, Coast Guard, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Bureau of Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA).

Budgets

Annual budgets for the fusion centers studied for this report appear to range from the tens of thousands to several million dollars (with one outlier at over \$15 million).²¹ Similarly, the sources of funding differed significantly from center to center—as stated, some were entirely dependent on transferring funds from existing state and/or local funding streams, while others were largely funded by federal grants. Federal funding ranged from 0%-100% of fusion center budgets, with

¹⁹ According to National Governors Association (NGA) survey data, “100 percent of (homeland security adviser) respondents have established a statewide emergency operations center”—based on 2004 survey for 2005 report, with 38 of the 55 U.S. states and territories responding, the survey achieved a 69 percent response rate—*Homeland Security in the States: Much Progress, Much Work*, January 24, 2005, available at <http://www.nga.org/cda/files/0502HOMESEC.pdf>.

²⁰ The large presence of state law enforcement personnel is natural given that the majority of fusion centers are state-wide entities that grew out of state police/bureau of investigation intelligence/analysis units. Of the local law enforcement agencies represented, the overwhelming majority are from the largest local police departments in the country, which have more resources, and in some cases, intelligence units. For more information please reference CRS Report RL34070, *Fusion Centers: Issues and Options for Congress*.

²¹ Fusion center budgets were assessed on a case-by-case basis, going back the numbers of years each fusion center was in existence and for which the center had budget data.

the average and median percentage of federal funding at approximately 31% and 21%, respectively. Thus, it appears that on the whole, fusion centers are predominately state and locally funded. Over the past two years, the federal government has provided financial support to fusion centers, largely through the homeland security grants,²² but it appears that states continue to pay for approximately 80% of fusion center budgets.²³

Access to Intelligence/Information

Almost all fusion centers studied for this report had personnel with security clearances, although there were a couple of exceptions that had few if any cleared personnel.²⁴ On average, fusion centers appear to have 14 staff with Secret clearances,²⁵ which is not insignificant considering the average staff size of the fusion centers interviewed for this report was approximately 27 full-time persons.²⁶ Clearances for state and local personnel were not restricted to Secret-level clearances, but also included some Top Secret (approximately 6 persons on average) and Top Secret-Sensitive Compartmented Information (SCI) (approximately one person on average) clearances as well. In some cases, federal detailees to the centers held the highest level clearances; in other cases, state, and local officials assigned to the center held TS/SCI clearances. In some cases, fusion centers had cleared personnel but not the infrastructure to receive and store classified information.

Successful Fusion

It is unclear if a single fusion center of the forty plus that are currently in operation (or soon to be) has successfully adopted a truly proactive prevention approach to information analysis and sharing. No state and its local jurisdictions appear to have fully adopted the intelligence cycle to support fusion center operations. While some states have seen limited success in integrating federal intelligence community analysis into their fusion centers, research indicates most continue to struggle with developing a “true fusion process” which includes value added analysis of broad streams of intelligence, identification of gaps, and proactive collection of information to fulfill those gaps to prevent criminal and terrorist acts.

Federalism and the Federal Role in Fusion Centers

One of the central, if implicit, themes that runs throughout this report is federalism. That is, while fusion centers were largely established by states, if the federal intent is to create a network of fusion centers that can be leveraged for both state, local, and federal public safety and homeland security purposes, there are several challenges that must be overcome. CRS research indicates

²² As well as the detailees, collocation costs, and clearances that are provided by individual federal agencies.

²³ Numerical assessment derived from discussion with fusion center leaders detailing the approximate funds received to date from the federal government.

²⁴ It should be noted that the ability to receive, share, and analyze information and make counterterrorism related decisions may be made difficult if the entirety of the fusion center’s analytic workforce does not have the same level of security clearance.

²⁵ For information on the various security clearances mentioned in this report see FBI, “Security Clearance Process for State and Local Law Enforcement,” available from <http://www.fbi.gov/clearance/securityclearance.htm>, accessed on July 27, 2007, and Derrick Dortch, “Getting a Security Clearance,” *The Washington Post*, June 25, 2004, <http://www.washingtonpost.com/ac2/wp-dyn/A52768-2003Feb10?language=printer>.

²⁶ For the purposes of this report, the authors attempted to focus on full-time personnel with clearances, although in some cases fusion centers have a large number of cleared part-time personnel.

that one of the central challenges of designing a constructive and productive federal role in supporting these state and local fusion centers is working to ensure that the centers retain their state and local-level identity and support from those communities. According to many homeland security observers, one manifestation of this tension lies in the need to strike a balance between the national needs for a consistent provider of state and local threat information with the state's autonomy to pursue issues deemed of importance to local jurisdictions. This tension is often notable when reviewing the diverse, and at times incompatible, types of threat and warning products required by state leaders and contrasted to those requested by federal homeland security and law enforcement entities.

Part of the challenge from the federal perspective has been how to guide, but not dictate to, the "owners and operators" of these largely state-established entities prior to the provision of any federal financial support. And, once federal financial and human resources support was provided, how to coordinate and target these resources for maximum overall return on investment.

Another example of how federalism flows throughout the fusion center issue is the legal treatment of terrorism. Terrorism is a federal crime. If it is prosecuted at all, it is usually done at the federal level. However, since the September 11th attacks, terrorism has been codified as a crime in many states.²⁷ Another example of how federalism permeates fusion centers is privacy. There is one Federal Privacy Act,²⁸ and numerous state privacy laws.²⁹ If fusion centers are serving both state, local, and federal ends, one of the central questions becomes what is the role of the federal government in supporting these centers, and what products and services can the federal government reasonably expect the centers to produce, given federal funding levels.

As elements of the states and regions they serve, fusion centers began to develop critical mass or staying power in the years immediately following the terrorist attacks of 2001. As these centers continued to proliferate across the country and garnered state support, federal entities began to take notice. While 30% of the fusion centers interviewed were established prior to 2004, concrete federal financial support for the centers did not materialize until Fiscal Year 2004, when, according to DHS, it provided \$29 million of Homeland Security Grant Program funding.³⁰ Federal guidance to the fusion centers followed shortly thereafter in July 2005. Finally, in 2006, human capital support in the form of DHS and FBI detailees to the centers began taking place.

While DHS has provided direct financial support to the fusion centers through the HSGP, the FBI has not provided direct financial support. The FBI's contributions have come more in the form of support for security clearances,³¹ personnel support, and other "in-kind" contributions, such as rent payments when centers are collocated with FBI Joint Terrorism Task Forces or Field Intelligence Groups.³²

The federal government has played several roles in assisting states and regions to develop their fusion centers, including the provision of:

²⁷ National Conference of State Legislatures, Summaries of Crime-Related Terrorism State Enactments, available at <http://www.ncsl.org/programs/cj/02terrorsum.htm>, January 2003.

²⁸ See the Privacy Act of 1974, codified at 5 U.S.C. Section 552a.

²⁹ See National Conference of State Legislatures, available at <http://www.ncsl.org/programs/pubs/privacy-overview.htm>.

³⁰ See DHS, Office of Grants and Training, *Fusion Centers: DHS Funded Activities—Fiscal Years 2004-2006*, April 2007.

³¹ According to the FBI, it has obtained security clearances for 520 State and local law enforcement officers assigned to fusion centers. See FBI, "Fusion Centers," material provided to CRS from the FBI, dated May 25, 2007.

³² See FBI, "Fusion Centers," material provided to CRS from the FBI, dated May 25, 2007.

- Recognition, post-9/11, of the need to have state and local governments and the private sector, non-traditional actors in national security matters, play an increasingly important role in homeland security.
- Guidance, to be adopted voluntarily by fusion centers, on the central elements of a fusion center and suggested methods for how to establish and operate sound fusion center policies and practices.
- Technical assistance and training related to issues encountered as fusion centers develop.
- Financial resources to support fusion center “start up” costs, including system connectivity.
- Human resources to assist in interaction with federal agencies and analytical fusion.
- Assistance to support enhanced information sharing between the federal government and state and local entities through the fusion centers.
- Congressional hearings on fusion centers.
- Promulgation of federal regulations.

Fusion Center Challenges and Potential Options for Congress

Given that fusion centers are entities established by states, localities and regions to serve their own criminal, emergency response, and terrorism prevention needs, and the sensitivities associated with federalism, there may not necessarily be a federal remedy to every fusion center-related issue identified in this report. Congress may wish to take no action regarding fusion centers.

Should Congress desire to act, there are at least two categories of challenges and potential options: (I) those challenges for which there are unique federal remedies and (II) those challenges for which there are no unique federal remedies, and may be more oriented toward possible state or level governmental intervention. Congressional remedies could potentially involve a broad range of possible actions including, but not limited to: oversight of federal agencies and entities engaged in interaction with fusion centers; requesting Executive Branch action on any number of fusion center-related issues; establishing a statutory basis for fusion centers; convening additional hearings which might include state and local fusion center leaders as expert witnesses; adjusting future funding levels for fusion centers; and/or considering the extent to which, if at all, any future federal funding may be conditioned on fusion centers meeting performance benchmarks established, perhaps jointly, by federal homeland security intelligence-related agencies and fusion center representatives.

Options for Congress

Given the stated need to develop a national network of fusion centers, and that a certain amount of financial and human resources have been devoted to assisting states and regions develop their fusion centers, the following represent challenges and options that the federal government and, specifically, Congress may wish to consider. Based on CRS research and analysis concerning the issues of greatest import to fusion centers, two prioritized tiers of options have been developed.

Tier I: National Strategy and Sustainable Resources

While the question of sustainable federal support for fusion centers was foremost in the minds of many associated with fusion centers, the absence of a formal national strategy for fusion centers was also a great concern.

Option 1: Draft a National Fusion Center Strategy

Notwithstanding the fact that individual federal agencies and offices may have their own strategies concerning their interaction with state and regional fusion centers, there remains *no definitive national strategy on fusion centers*. One option for Congress is to recommend that the Executive Branch draft a cross-agency national strategy with input from the FBI, DHS, ODNI (PM-ISE), DOD and other Intelligence Community, and state and regional fusion center representatives. Should such a strategy be determined desirable, it might address the following issues:

- **Ownership and benefits.** Who “owns” fusion centers and who benefits from their work?
- **Federal versus state, local, and tribal (SLT) roles and responsibilities, to include funding.** What is an equitable division of labor and costs?
- **Permanence—statutory basis and sustainment funding.** If fusion centers play an important homeland security role, should they be provided a statutory basis at the federal level? If continued federal funding is being contemplated, how might it be structured to yield the most productive outcome for federal, state and local fusion center clients?
- **Ultimate goals and performance measures.** What gaps do fusion centers fill and how does the federal government measure performance?
- **Coordinated federal interaction with fusion centers.** How does the federal government ensure the various agencies engaged in homeland security have a coordinated plan for fusion and efficient interaction with fusion centers?
- **Relationship between fusion centers and the Federal Intelligence Community.** How closely, if at all, should fusion centers be integrated into the federal intelligence community? Are fusion centers members of the intelligence community, adjuncts or partners with the intelligence community, a proxy information source, or an unrelated and parallel information effort?

Option 2: Answer the Sustainment Funding Question

While respondent fusion center leaders had many high priority items concerning their interaction with the federal government, the question of sustainment funding was foremost in their minds. Should federal funding to fusion efforts be continued? To what end? And, how conditional does Congress want federal aid to fusion centers to be? The current regime of HSGP funding includes some limited conditions for funding fusion centers. However, the Fusion Center Guidelines remain entirely voluntary even for recipients of federal HSGP funds. As a result, for example, the federal government has no formal and systematic means of auditing whether each center is appropriately protecting civil liberties, or using federally funded intelligence analysts in a manner that is consistent with national goals and objectives for fusion centers, should they be explicitly defined. As outlined above, should Congress determine it wishes to take action on this option, a range of possible legislative tools are available, as discussed below.

2a. Status Quo

The most obvious option is to continue the current manner of funding—that is, using the HSGP grants as the federal mechanism to make funding available for states and localities for potential allocation to state and regional fusion centers. This process is reliant on state grant applications, and the flow of federal funds to state/regional fusion centers is largely determined by the sub-federal designees that make homeland security grant allocation decisions within each state and/or municipality. Furthermore, fusion centers compete with a wide range of homeland security initiatives for funding. While certain elements of HSGP funding are geared toward supporting fusion center development, there is no targeted funding stream directly allocated to fusion centers themselves.

2b. Status Quo “Plus”: Enhance Flexibility of the Current HSGP or Establish a Fusion Center Grant Program Within HSGP

Under this potential option, the current grant program could be slightly altered to address some of the oft cited hurdles that state and local officials believe impede the flow of federal grant funds to fusion center projects. Two such alterations to be considered include:

- Increasing the duration of grant cycles in order to allow for enhanced continuity and human resource planning, particularly for contract-supported intelligence analysts.
- Building some level of autonomy into the HSGP “80/20” localities/state split of HSGP funding to allow state political leadership some autonomy to re-allocate a portion of overall HSGP funds to a single, designated state-wide fusion center. Such flexibility could be conditioned on formal HSGP audits to ensure accountability and that funds re-allocated within state HSGP awards are consistent with the state’s fusion center mission and Federal Fusion Center Guidelines. These audits would include input from fusion center leaders, State Administrative Agents, and the state’s Homeland Security Advisor.

2c. Develop a Sustainment Funding Approach

If it is determined that establishing a national network of fusion centers serves long-term, national homeland security interests, it may be reasonable to design a system which provides resources to state and local fusion centers commensurate with the national benefit derived. This presupposes the development of (1) a cogent set of concrete national interests served by fusion centers, (2) a set of metrics that can quantitatively capture how well fusion centers are meeting these interests and goals, (3) standards for “minimum levels of capability” and fusion center “maturity,” and (4) thresholds linking levels of maturity to levels of federal funding. These standards and metrics could be developed as part of a cooperative endeavor between federal, state, and local representatives, possibly under the “Global” program. As with other options above, the extent to which Congress could condition such an approach is an open question.

2d. Direct and Sustainable Fusion Center Functional Support

Alternatively, Congress alone, or with input from DHS, the FBI, and the PM-ISE, could determine that there are certain fusion center functions that provide direct value and benefits to the federal government, and as such, warrant sustainable federal financial support. For example, it might be determined that the development of state-wide intelligence systems and information and intelligence analysis are two core fusion center functions that are clearly linked to the federal benefit derived from fusion centers. As such, the federal government could determine that it

would support these functions directly and possibly in a sustainable manner. If such a decision were made, a pilot program might be established and implemented at certain fusion centers over a specified time period to ascertain empirical federal benefits derived from direct support of such functions.

2e. End Federal Funding

Some homeland security observers suggest that the lack of a federal fusion center strategy coupled with differing governmental mission expectations may prevent effective coordination between state and federal government homeland security organizations. If the mission of state fusion centers evolves into analyzing non-terrorism-related, local criminal activities, with little consideration for meeting the needs of federal counterterrorism agencies, Congress may wish to end federal funding for state fusion center efforts.

Tier II: Creating a True Trusted Partnership

The further development of the relationship between the federal law enforcement and intelligence communities with fusion centers may prove helpful. The following measures may facilitate this relationship:

Option 1: Training

Given that effective information/intelligence fusion and proactive approaches to all-hazard prevention and preparedness depends on a common understanding of intelligence and information and the potential uses thereof, an argument can be made for enhanced and uniform fusion center training. CRS research indicates that the diversity of types of professionals serving in fusion centers can lead to differing perspectives, or possibly, competing visions for the fusion center. Retired military intelligence officers may approach intelligence differently from, for example, state first responder personnel. While neither approach may be “best” and the center might benefit from diversity of opinions, a common understanding of and lexicon for intelligence and its benefits and limits amongst all level of fusion center personnel can go a long way toward ensuring cohesiveness, clarity of vision, and productivity of a fusion center.

In addition to intelligence training, some homeland security observers note that fusion centers may benefit from additional and standardized civil liberties training. Most fusion centers surveyed claim to have institution-wide civil liberty training and awareness activities that ensure all employees are aware of how personal and corporate information can be collected, received, stored, and combined with traditional intelligence community information toward producing a risk assessment for a given issue of concern. However, this training is often agency-specific and there may be differences between state activities and federal expectations. As such, Congress may wish to require a part of all funding allocated toward a state fusion center be used for nationally consistent civil liberties training with special attention to concerns surrounding the use of private sector data. Another option would make such training a precondition for receiving federal grants. Should Congress wish to pursue this option, a range of possible legislative tools are available, including designating a federal government entity to provide oversight of these efforts, amongst others, as discussed below.

Option 2: Build Additional Linkages to the Federal Intelligence Community

Director of National Intelligence (DNI) Michael McConnell’s “Focus Area 5: Accelerate Information Sharing,” in the *100 Day Plan for Integration and Collaboration*, asserted that, “The Plan includes objectives related to enhancing information sharing within the IC as well as the

formalization of fusion centers that are in the process of being developed.”³³ Formalization and linkages between the fusion centers and the federal intelligence community could have many interpretations and concrete manifestations. As outlined above, should Congress determine it wishes to take action on this option, a range of possible legislative tools are available, as discussed below. Among others, these linkages might take the form of:

- Continued strengthening the fusion center participation in the intelligence community through personnel exchanges, such as that taking place at the Interagency Threat Assessment Coordination Group (ITACG).
- Drafting a National Intelligence Estimate on the potential nexus between criminal activity and terrorism.
- Enhancing mechanisms for fusion centers to task the Intelligence Community for information and receive feedback based on the information they provide to the Intelligence Community.
- Establishing a mechanism for fusion centers to have input into the National Intelligence Priorities Framework.

Option 3: Consider Structural Issues

There is no “cookie cutter” approach to fusion centers. Although the centers may all have some core functions, the financial and personnel resources they have to dedicate to those functions differ widely. Structurally, the continued development of the fusion center concept could progress along any of the following, albeit non-exhaustive, paths. Should Congress determine it wishes to take action on this option, a range of possible legislative tools are available that might influence that following potential paths of development, including

- supporting the current path of development,
- supporting the designation of one fusion center per state,
- moving toward the development of regional fusion centers,
- expanding the FBI Field Intelligence Groups to be the Federal Strategic Analysis Fusion Centers, and
- establishing of a National Fusion Center Representative Organization.

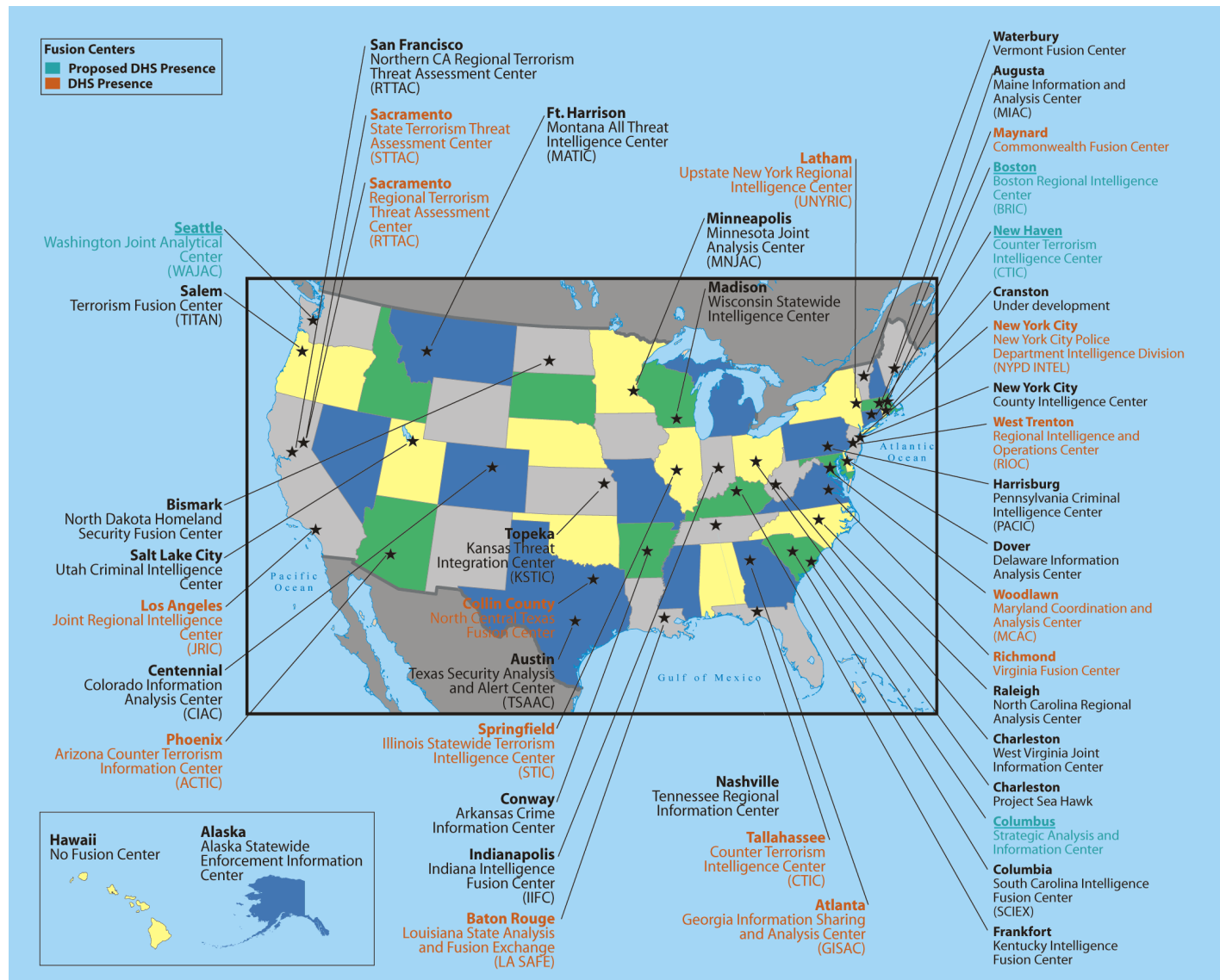
Option 4: Enhance Information Access and Management

There are numerous measures which Congress might consider in this area to assist fusion centers. Should Congress determine it wishes to take action on this option, a range of possible legislative tools are available that might influence that path of development, as discussed below.

- Consider revision to federal regulations guiding state, local and tribal (SLT) criminal intelligence systems, 28 CFR, Part 23.
- Require all federally funded criminal intelligence systems to be interoperable.
- Standardize reporting formats.
- Consolidate federal information sharing systems.
- Consider increasing the number of cleared SLT personnel at fusion centers.
- Urge compliance with the Intelligence Reform and Terrorism Prevention Act and 9/11 Commission recommendations regarding over-classification.

³³ See Office of the Director of National Intelligence, *100 Day Plan for INTEGRATION and COLLABORATION*, p. 9.

Appendix. Figure 1. Map of Current and Planned Fusion Centers



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